



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation on May 26, 1999

NOTICE OF ACTION TAKEN -- DOCKET OST-99-5606

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Applicant: **East Line Airlines**

Date Filed: April 29, 1999

Relief requested: Exemption from 49 U.S.C. § 41301 to engage in charter foreign air transportation of persons, property and mail between the Russian Federation and the United States; and other charters in accordance with Part 212 of the Department's rules.

If renewal, date and citation of last action: New authority

Applicant representative: Glenn P. Wicks (703) 841-4665

Responsive pleadings: On May 14, 1999, Fine Air Services, Inc. (Fine) responded to East Line's application stating that it takes no position on East Line's request to conduct Russia-U.S. charter operations. However, Fine states that Russian all-cargo carriers have a history of placing undue reliance on Fifth Freedom charter operations, and opposes East Line's request to the extent that East Line intends to rely on such services. No further responsive pleadings were filed.

DISPOSITION

Action: Approved

Action date: May 26, 1999

Effective dates of authority granted: May 26, 1999-May 26, 2000

Basis for approval (bilateral agreement/reciprocity): The U.S.-Russia Air Transport Agreement of January 14, 1994.

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated:

X Standard exemption conditions (attached)

Special conditions/Partial grant/Denial basis/Remarks: With respect to the concerns raised by Fine, we note that the charter authority we are granting East Line is subject to the requirement that East Line obtain a statement of authorization for all charter operations it proposes to conduct to and from the United States, including Fifth Freedom charter operations (see below). We will, therefore, have the opportunity to assess, on a case-by-case basis, the public interest merits of each charter application filed by East Line.

Based on the record in this case, we found that East Line Airlines is financially and operationally qualified to perform the services authorized above.¹ In addition, we found that East Line Airlines is substantially owned and effectively controlled by citizens of the Russian Federation. East Line Airlines is properly licensed and designated by the Government of the Russian Federation to perform the proposed services. By memorandum dated May 14, 1999, the FAA advised us that it knew of no reason why we should act unfavorably on East Line Airlines' application.

In the conduct of the charter services authorized above, East Line Airlines must adhere to (1) the conditions attached to this order, (2) FAA-approved flight routings, and (3) the U.S.-Russia Air Transport Agreement. In accordance with sections 212.9(d) and (e) of the Department's rules, East Line Airlines shall not perform any charter(s) unless specific authority in the form of a statement of authorization for such charter(s) has been granted by the Department. Applications for statements of authorization required above shall be filed in accordance with the procedures set forth in section 212.10.

¹ East Line states that it is unable to provide reliable financial statements because it has not yet adopted western accounting procedures, and asks that in lieu of the required financial information that we establish its financial qualifications based on its history of successful services world-wide over the past five years.

Action taken by: Paul L. Gretch, Director
Office of International Aviation

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) the applicant was qualified to perform the proposed operations; (2) immediate action was required and was consistent with Department policy; (3) grant of the authority was consistent with the public interest; and (4) grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. To the extent not granted/deferred/dismissed, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR § 385.30, may file their petitions within ten (10) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

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http://dms.dot.gov/reports/reports_aviation.asp

FOREIGN AIR CARRIER CONDITIONS OF AUTHORITY

In the conduct of the operations authorized, the holder shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are:
 - (a) based on its operations in international air transportation that, according to the contract of

carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or

- (b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States.

In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;

- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;

- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;

- (10) If charter operations are authorized, comply (except as otherwise provided in the applicable bilateral agreement) with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and

- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code (formerly the Federal Aviation Act of 1958, as amended).

